

REPORT
OF
ADVISORY COMMITTEE
TO
THE CHIEF MINISTER OF DELHI
(ON NOV. 1984 KILLINGS)

Justice R.S. Narula

Chairman

Lt. Gen. J.S. Aurora

Member

Justice D.V. Sehgal

"

Justice U.R. Lalit

"

Dr. Maheep Singh

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Adarsh Goel

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Virender Singh Johar

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M.S. Butalia

"

H.S. Phoolka

Member-Secretary

FIRST REPORT OF ADVISORY COMMITTEE

SETTING UP OF THE ADVISORY COMMITTEE

INTRODUCTION

This Advisory Committee was constituted on 16th December, 1993 by Shri Madan Lal Khurana, Chief Minister of Delhi to suggest course of action and steps to be taken to expeditiously punish the guilty of November 1984 killings in Delhi.

2. The government has admitted a total number of 2733 killings of innocent Sikhs during the carnage in first 3 days of November 1984 in Delhi alone. It has been noticed and observed by all most all the Commissions and Committees that a large number of cases of murder and other heinous crimes have not been registered by the police, and that even from amongst those cases which have been registered, investigations have not been conducted properly in a large number of them. It has also been observed that the cases which are pending in the court have not been prosecuted properly. Consequently only 3 murder cases are stated to have resulted in conviction during the last 9 years. The cases relating to the persons in authority and the political leaders, have not been pursued, and hurdles have been created in their prosecution at every stage and in every possible manner.

3. For all these years Government has violated the salutary principles of Criminal Jurisprudence emphasised by their Lordships of the Supreme Court of India, in the following words, while laying down the law on the subject in "Mahendra Singh Versus State of West Bengal" (AIR 1973 SC 2299) :-

"Undue delay in the final disposal of criminal cases tends to some extent to defeat the very purpose of criminal justice. Speedy disposal of criminal cases for commission of offences promotes confidence of the society in the administration of criminal justice which is essential for sustaining the faith of the law abiding members of the society in the effectiveness of the rule of the law"

4. The newly constituted Government of Delhi has for the first time risen to the occasion and openly recognised the necessity to punish the guilty of

carnage as expeditiously as possible; and has therefore constituted this Advisory Committee comprised of the following members:

1. **Justice R.S. Narula** **Chairman**
Former Chief Justice, Punjab & Haryana High Court and Member of Citizens Justice Committee.
2. **Lt. Gen. J.S. Aurora (Retd.)** **Member**
Former Member of Parliament and Member of Citizens Justice Committee. President, The sikh Forum
3. **Shri D.V. Sehgal** **Member**
Former Judge, Punjab & Haryana High Court.
4. **Shri U.R. Lalit** **Member**
Former Judge, Bombay High Court.
5. **Dr. Maheep Singh** **Member**
Eminent Writer Editor- SANCHETNA
6. **Shri Adarsh Goel** **Member**
Advocate, Supreme Court of India
7. **Shri Virender Singh Johar** **Member**
Industrialist and Social Worker.
8. **Shri M.S. Butalia** **Member**
Advocate & Member, Legal Aid Committee for Riot Victims.
9. **Shri H.S. Phoolka** **Member-Secretary**
Advocate, Former Central Government Standing Counsel, Convenor, Citizens Justice Committee and
Member of Legal Aid Committee for Riot Victims.

The Advisory Committee has been asked to submit its first report within four weeks i.e. by 16th January, 1994 hence this report.

BACKGROUND AND BRIEF FACTS

5. First week of November 1984 experienced the worst violence and carnage in the history of Independent India. Though the violence on the same pattern took place in all the Congress - ruled States of the country, the killings, arson and loot in Delhi was unprecedented in its extensiveness as well as

intensity . It took place almost in every corner of the Metropolis The killings were directed mostly against poor and defenceless Sikhs. The arson and loot was directed against the houses and the commercial establishments owned by Sikhs of means. They were mercilessly beaten, burnt alive and killed in thousands. When the possibility of identification of the criminals by recovery of looted property from their possession assumed some proportion, the police issued public orders that if those having such property pile it upon the roads, no actions would be taken against them for possession of stolen property. This was a blatant violation of the law and was a patent step to help the criminals.

6. During the first three days of November, there was not even a semblance of any concern by the authorities for those who were suffering in the massive . In-coming trains to Delhi were stopped in nearby Railway Stations in Haryana and U.P. and Sikh passengers were picked out, beaten mercilessly, piled up and torched. False rumours were spread against the Sikh Community. The entire tragic episode was dismissed and sought to be brushed aside by the government as if it was only a ripple on the surface of the secular democracy. But the picture showed as if the whole violence had been organised by the ruling party and the whole thing was the handiwork of some highly placed people who had during those three fateful days, caused a deliberate paralysis of the machinery for maintenance of law and order so that the Sikh community receives full blast of the operation "teach a lesson".

7. Large number of eminent citizens of Delhi imbued with deep concern for human values as also for the values of secularism and democracy immediately conducted independent investigations and inquiries to find out how the horrifying carnage could take place in the metropolitan capital of the country and could overwhelm all parts of the metropolis from midnight of the 31st October to 3rd of November, 1984. Mention is made below of some of the reports of those social organisations:-

(i) Report of the Citizens Commission.

The Citizens Commission was comprised of the following persons:

Justice S.M. Sikri	Former Chief Justice of India
Shri Badr-Ud-Din Tyabji	Former Commonwealth Secretary and Vice-Chancellor, Aligarh Muslim University.
Shri Rajeshwar Dayal	Former Foreign Secretary, Visiting Fellow, Oxford University.
Shri Govind Narain	Former Governor of Karnataka and Home & Defence Secretary

Shri TCA Srinivasvaradan

Former Home Secretary

(ii) **Report of Citizens for Democracy. (C.F.D.)** titled "Truth about Delhi violence"

By Justice V.M. Tarkunde, Professor Ms. Amiya Rao, Shri Aurobindo Ghose & Shri N.D. Pancholi.

(iii) **Report of Peoples Union of Civil Liberties (PUCL) and Peoples Union of Democratic Rights (PUDR)** under the caption- **"WHO ARE THE GUILTY"**

A copy each of the abovementioned three reports are annexed and marked as **AC I, II and III.**

These reports not only give details of the horrifying events locality-wise, but also are unanimous in their conclusion that the said carnage was an organised one. One report gave the names of some of those against whom a strong suspicion existed for their role in the organisation of the carnage. There nevertheless was complete unanimity in respect of the role of the police which was found guilty of negligence and at places of active complicity with the organisers and perpetrators of the crimes.

8. The prominent citizens and organisations demanded setting up of a judicial commission to inquire into the whole episode. No such commission was however appointed at that stage. Peoples Union for Democratic Rights (PUDR) filed a writ petition in the High Court of Delhi seeking the directions of the Court for appointing a commission of inquiry. The government opposed the writ petition and ultimately it was dismissed by a Division Bench of the Court.

One more writ petition was filed by a journalist, Mr. Rahul Kuldeep Bedi praying for directions to take action against certain police officials who were negligent in their duties or had actively connived with the criminals. In that writ petition, the government informed the court that an inquiry was being conducted by Shri Ved Marwah Additional Commissioner of Police regarding the role of police officials during the violence and the inquiry would be concluded and the report would be submitted by the end of April 1985. On the basis of that statement of government counsel, the court dismissed the writ petition and asked the petitioner to approach Mr. Ved Marwah.

9. Ultimately as a result of and in pursuance of one of the terms of the Rajiv Longowal accord signed in April, 1985 a commission of inquiry headed by then Supreme Court judge Ranganath Misra was appointed to inquire into the violence in Delhi, Kanpur and Bokaro.

10. After the appointment of Misra commission the government directed Shri Ved Marwah Additional Commissioner of Police not to proceed with his inquiry as the Misra Commission of Inquiry had since been appointed. Mr. Marwah who is stated to have proceeded with his inquiry to a large extent by then, could not submit his report due to those directions.

All the documents relating to the Ved Marwah inquiry were summoned by Misra Commission of Inquiry. But those important proceedings of the immediate inquiry were not made available even to the Misra Commission.

Before the Misra Commission the government took a stand that the Commission could not name the guilty persons because it was not a part of its terms of reference.

This is an instance of the governments attitude which confirms the impression that the then Central and State Governments tried to scuttle the inquiry into the carnage at every stage and in every manner. All efforts were made to shield the guilty and to scuttle the process of law which required to identify and punish the guilty, in the public and the police.

11. All the organisations which were working for getting justice for the victims joined hands together and found one organisation to present the case of the victims and their heirs before the Misra Commission. This organisation was named "**Citizens Justice Committee**" (CJC) **Justice S.M. Sikri**, Former Chief Justice of India was the President of the CJC, **Justice V.M. Tarkunde**, **Justice R.S. Narula**, **Shri Soli J. Sorabjee**, **Shri Khushwant Singh**, **Lt. Gen. J.S. Aurora**, **Shri Gobinda Mukhotey**, **Shri Rajni Kothari** and others were its members. **Mr. H.S. Phoolka**, Advocate was appointed as the Convenor of CJC.

The CJC presented the case of the victims before the Misra Commission. In fact all the proceedings of the Misra Commission were conducted at the behest of the CJC in the beginning. The Commission summoned some of the relevant documents and other information on the basis of the application filed by the CJC.

12. The role of the CJC was to effectively assist the Commission to arrive at the truth. Some other organisations also appeared before the Commission at the behest of the Congress. Some of the parties appeared before the Commission only with a view to derail the inquiry and help the exoneration of Congressmen against whom specific evidence of participation in the crimes was alleged and sought to be proved by evidence on affidavits of eye witnesses and effected persons. The Delhi Admin. put in appearance before the Commission and supported the case of the perpetrators of the crimes and the action and inaction of the police.

13. 639 affidavits were filed before Misra Commission by the victims and eyewitnesses in support of the victims. 2266 affidavits were filed against the victims in favour of Congress leaders and police. Most of the affidavits in favour of the accused were cyclostyled in an identical proformas in which only the particulars of the deponent were filled up by hand. Most of the deponents of those affidavits which were summoned by the Commission did not appear before the Commission to support their affidavits. Some others who appeared disowned their purported affidavits. The Misra Commission has held in its report that the Commission was not placing reliance on those affidavits.

14. Towards the end of the inquiry Misra Commission denied the following amongst other rights to the CJC:

(a). Right to Cross Examine the deponents of affidavits in favour of the Congress or the accused persons.

(b). Right to inspect the statements of the witnesses summoned at the instance of CJC, but examined by the Commission behind the back of the CJC.

(c). Right to inspect the record produced at the behest of the CJC.

(d) The right to inspect or take copies of affidavits filed in favour of the Congress or the accused.

When the Commission did not agree to give the above mentioned facilities to the CJC in contravention of the basic principles of rule of law, the CJC could not play its role effectively and found it impossible to fulfill the task taken up by it in public interest. In those circumstances, the CJC had no option but to withdraw from the proceedings as its further participation after placing on record the reasons for its decision in a written application stating, inter alia that its inevitable conclusion was that the CJC was in effect being excluded from the inquiry.

A copy of the written application of the CJC dated 31st March 1986 is attached hereto and marked **AC IV**.

Delhi Sikh Gurdwara Management Committee continued appearing before the commission and filed written arguments on behalf of the victims, a copy of the same is attached hereto and marked **AC V**.

15. The Misra Commission finally submitted its report in August 1986. It was tabled on the floor of the Lok Sabha on 22nd February, 1987 i.e. after 6 months of its submission to the Government.

Some of the relevant findings of Justice Rang Nath Misra Commission are reproduced below for ready reference:-

(Page 31.) " The Commission accepts the evidence placed before it that most of the mobs were from areas different from where they operated and only a few local people had joined such mobs to facilitate the operations. In some areas, however, local people had also organised riotous activities. In the mobs of both types people of different communities (not being Sikhs) did join. the anti social elements monitored the activities of these mobs and played the principal role in killing, looting as also arson.....".

"ROLE OF POLICE"

(Page 33.) "There is abundant evidence before the Commission that the police on the whole did not behave properly and failed to act as a professional force. Telephone No. 100 which is meant for notifying for police assistance did not respond at all during that period . The police stations when contacted on telephone ordinarily did not respond and if there was any response it was a plea of inability to assist. The behaviour of most policemen was shabby in the sense that they allowed people to be killed, houses to be burnt, property to be looted, ladies to be dragged and misbehaved within their very presence....."

(Page 34.) " Though senior police officers have denied that there was any active support or association of police with the crowds and the Commission does not have any definite material against named policemen of having played such role, it is difficult to reject the allegations as baseless. The Commission is of the view that detailed investigation/inquiry should be undertaken to find out whether some policemen of the Delhi Admn. had not behaved that way. The then Lt. Governor Gavai in his evidence before the Commission has stated:

"The flow of reports of actual happenings was not coming. Lt. Governor's channel for information was through the establishment of the Commissioner of Police. "

(Page 35.) " Additional Commissioner Jatav has told the Commission that he got the information of killings in Kalyan Puri only at 7 PM on November 2nd 1984 and this he checked from his records and stated that Kalyan Puri is 12 KM away from Police Headquarters. As already mentioned, more than 200 people died in the area and on his own showing these took place during the night of November 1st, 1984. Such a brutal incident taking place within a distance of 12 KM from the Headquarters not to be known to the Additional Commissioner of area for well over 16 to 18 hours easily gives the impression that police administration had virtually become ineffective during that period. The version of the officer that higher officers were taking rounds has become

not acceptable in view of his statement that during that disturbed condition the information from Kalyan Puri area could not travel to the Police Headquarters. There are many pockets in the city inhabited by more of Sikhs with which no attempt was made to keep contact either by rounds or otherwise. Jatav has assessed that 25 % of Delhi Police Personnel became indifferent"

".....In answering the question of the Commission as to whether it was a case of positive negligence or one of callousness or inattention, Shri Sethi (then Distt. Magistrate of Delhi) stated : "I do not think it is a case of open participation but to my mind it seems to be a case where under pressure they remained away from duty and ceased to be effective with a few exceptions. Some SHO 's were effective and dutiful. About 25 to 30 % of these SHO's were found effective. All others remained indifferent and did not come up to the mark."

The Commission wanted a clarification as to the meaning of 'Pressure' and Shri Sethi stated: "I refer to local political pressure but in the absence of any positive material I can not name the source of pressure. It is, however, a fact that the police remained ineffective as if something had happened to keep them away from their duty."

Shri Sethi further stated : "My impression is that had the police done the appropriate planning and on 31-10-1984 apprehended that the situation may turn worse, by themselves with a little assistance and moral support from the Army they would have been able to maintain law and order effectively and nothing to that extent would have happened."

(Page 36) " In the opinion of the Commission this is a reasonable assessment of the situation. Police Commissioner Tandon should not have felt satisfied that by promulgation of prohibitory order under section 144 Cr. P. C. the situation would be brought under effective control. More of useful planning should have been undertaken and the line of action from the afternoon or atleast the night of October 31 1984 should have been different. Some higher police officers should have been deputed to move about in different areas to activate the local police and instill in them the dual sense of duty and confidence. If the Army had to be called that matter should not have been deferred till the next morning. Killing of Smt. Gandhi was not a small matter and every one should have reasonably apprehended serious repercussions . The then Lt. Govr. did have such apprehension as told by him. Since the government had already alerted the Army the Lt. Govr. and the Police Commissioner should have called in the Army and asked them to patrol during the 31st evening and night in the sensitive locality. If the right time police action had started with a number of police force available the entire situation would have remained under control. Police Commissioner Tandon's own statement is the best material to rely upon for such conclusion. He has said That wherever

the local police behaved , the situation did not go bad at all or very much. It is not the stand of Shri Tandon that wherever the police are said to have behave like a disciplined force, there was an adequate force available. Therefore, inadequacy of police personnel does not seem to be the real cause. On the other hand, Shri Sethi's statement that the police became indifferent appears to be the real one....."

".....Law permits use of even fire arms in some eventualities in self defence of person and property. If the police were able to control the riotous mob certainly they were entitled in a given situation to temporarily take away the licenced fire arms with a view to easing the situation. But when riotous mob could not be controlled - and this is the admitted position - in the face of the law authorising the right of private defence to be exercised with the aid of fire arms , if necessary and justified, it was not all proper on the part of the police to withdraw the fire arms from some of the people belonging to the group which was being attacked and thus expose the weaker group to greater risk in the hands of the rioters. The Commission is not in a position to approve of this conduct on the part of the police....."

(Page 37)....."there is evidence which the Commission cannot ignore that on several occasions when fire tenders started moving to places of arson on receiving intimation, mobs blocked the passage and held them up or forced them to return. On several occasions this was done in the presence of the police. It is well known that fire tenders have precedence of movement on the roads for they move to answer an emergency yet the police did not attempt to clear the way.

Several instances have come to be narrated where police personnel in uniform were found marching behind or mingled in the crowd. Since they did not make any attempt to stop the mob from indulging in criminal acts, an inference has been drawn that they were part of the mob and had the common intention and purpose. Some instances, though few number, have also been noticed where policemen in uniform have participated in looting....."

(Page 38.) " There is some force in the allegation of DSGMC that the police had no business to change the method of recovery of stolen goods. Ordinarily, the place where stolen articles are stored - be it a house or some other place - is searched, recoveries of identified articles are made, on the basis of such recoveries prosecution is launched and the possession of the identified stolen property constitutes good evidence for the offence punishable under section 411 and 412 IPC and provides a presumptive link for the offence . During the riots the police instead of following this known method, adopted a novel one of inviting the culprits to pile up the stolen articles in the open, near the houses from where the removal had been made. By this process, the best

evidence linking the accused with the offence vanished. Such of the articles which were returned belonged to several persons and were mixed up. Very often, as alleged, they were taken away from their by others and even by policemen. Since the Commission has not been told the justification for the adoption of this novel and uncanny procedure, the suggestion of the victims that this procedure held misappropriation of some of the articles can not be ruled out. The Commission has however, no intention to act on surmises and leave this aspect to be taken up in the inquiry against the police officers as recommended by it."

"Surprisingly the Delhi Admn. has supported the action of the police and seriously attempted to extend cover for the lapses. In the written submission on behalf of the administration reliance has been placed on different provisions of the Punjab Police Rules 1934, which perhaps have been kept in force under Section 149 (1) of the Delhi Police Act, 1978. The Punjab Police Rules were made at a time when the country was under shackles of foreign domination. the role of the police under the foreign ruler was meant to be different. The long title of the 1978 Police Act says that it was an Act to amend and consolidate the law relating to the regulation of the police in the Union territory of Delhi. The entire position should have been reviewed when a revamping was attempted by introduction of a new law and if the Punjab Rules were found insufficient, inadequate or archaic to meet the demands of the times, proper rule should have been made. There was no necessity or justification to continue those antiquated rules under the new Act. Want of a riot squad in the Delhi Police has also been advanced as a justification for the police conduct. The Commission notices with disapproval such a stand by the administration. Perhaps that could have been advanced as a justification on behalf of Delhi Police if it was being indicated by the Administration, but the administration should not take that stand. By October 1984 riots had become too frequent in India and under the excuse or cover of every available plea based upon economic, religious, political and social issues, society was being victimised by riots now and then. Delhi and neighbouring places had seen riots on more than one occasion. It is difficult for the Commission to appreciate that the Delhi Admn. had not thought it appropriate to equip its police with one or more riot squads. The Commission is also not in a position to appreciate the stand of the Delhi Admn. that when " happened during 31st October to 3rd November 1984 was not a problem of maintaining law and order but reflected the sudden and spontaneous National outburst culminating from the vacuum caused by an unprecedented and never thought of murder of the Prime Minister of India. "As already found, what happened was certainly unprecedented possibly beyond the range of advanced comprehension. The stand that it was a spontaneous national outburst which may be a fact, cannot be used as a ground to justify the behaviour of the Delhi Police. The spontaneous

national outburst (reiterating the phase of the Delhi Administration) did not bring about the calamity of the type that happened in Delhi in other parts of the country....."

(Page 39.) "The Commission, therefore, is not in a position to accept the stand of Delhi Administration on this score taken in the written submission. It is to be remembered that the Delhi Administration took no positive stand in regard to the police conduct when called upon to do so. It led no evidence and even did not place any document before the Commission unless called for. In the written submissions certain aspects have been assumed though the relevant evidence has not been placed before the Commission. This approach to the matter certainly is not tenable....." It is in evidence before the Commission that administrative action was initiated against some of the delinquent police officers. Shri Ved Marwah, the then Addl. Commissioner of Police was also asked to inquire into the lapses of police officers during the riots. Sh. Marwah has told the Commission:

" I was handling an inquiry to the lapses of police officers during the Nov. 1984 riots. I had proceeded with the inquiry to a large extent but some important witnesses had yet to be examined, including the then Commissioner of police. I had been directed to make this administrative inquiry by the Commissioner of police but he later directed that the inquiry may not proceed in view of the fact that a judicial inquiry into the matter was being undertaken. That is how the matter has not proceeded further".

He has further stated : "As I have just stated, I never came to the final stages of the inquiry but in course of the inquiry I had come across instances where there was prima facie material to show lapses on the part some police officers. Such lapses appeared in respect of DCPs, ACPs, as also SHOs and officers of even lower ranks".

At one stage the Commission was inclined to go into the lapses, issue notices under section 8 (b) of the Commission of Inquiry Act and record findings of lapses , but in view of the evidence later available that the lapses were rampant and several officers of different rank would be involved if such an inquiry is undertaken, the Commission changed its approach to the matter. Such an inquiry would have pro- tracted the proceedings and unusual delay in submission of the Report on the issues referred to the Commission was not considered expedient. Again the Commission has taken into the consideration the position that even a finding under section 8 (b) of the Act is given, it would not bring about suitable punishment for the delinquency that may be found and further administrative or criminal action would be necessary for such purpose. Keeping all the aspects in view the Commission has not thought it

proper to name any one of the delinquent. This , however, does not mean that the Commission is of the view that the conduct of the delinquent police officers should not be inquired into. On the other hand, the Commission is of the opinion that a proper inquiry should be undertaken. Such a probe is in the interest of the police as a force as also the administration . The black sheep can be identified and suitably dealt with . The dutiful officers should be commended. The defects can be found out and remedied. The morale of the police as a disciplined and professional force can be streamlined on the basis of the result of the inquiry....."

(Page 40.) " On November 25th 1984 hardly three weeks after the riots, the Marwah Inquiry was set up by the Delhi Admn. for findings on :

(i) identification of incidents of serious failure or negligence , if any, on the part of the individual police officers /men;

(ii) identification of good work, if any, done by individual police officers/men so that they could be suitably rewarded;

(iii) identification of deficiencies and limitation of man power and equipment of the police force and suggestions as to measure to tone up the functioning of the police to meet the challenge in the days to come.

Soon after Sh. Marwah, the then Additional Commissioner of Police , proceeded with the inquiry Shri Chander Prakash and Shri Sewa Dass, Deputy Commissioner of Police, Incharge of South and East Delhi respectively during the November riots filed a suit before the Delhi High Court and at their instance by order dated November 25th 1985, in IA No. 2246/85 arising out of suit no. 677/85, the High Court made an order of injunction against Shri Marwah and Shri Jog (Police Commissioner), defendants 1 and 2 in the suit, restraining them from publishing the inquiry report or submitting the same to the Lt. Govr. of Delhi or the Union of India for taking any action there upon against the plaintiffs. No further steps appear to have been taken by the Administration to get this injunction vacated or varied. A lot of criticism has been advanced in the written arguments of the DSGMC against the administration for accepting the injunction staying the inquiry by Shri Marwah. The criticism seems to be justified but with that part of the matter the Commission has indeed no further concern in view of the fact that else where in this report the Commission intends to recommend another inquiry to be conducted. What is relevant for the purpose of this report is that two of the Dy. Commissioners of Police were apprehensive that there was a likelihood of materials coming out against them if Shri Marwah proceeded with the inquiry and, therefore, they were anxious to rush to the court and obtained an order of interim injunction. The inquiry , as the Commission gathers, was not proceeding for other reason even before the injunction from the High Court came but if the injunction had not been there quite likely some sort of inquiry could have been carried on in view of the fact

that Shri Marwah had by then become Commissioner of Police and appeared to be in favour of the inquiry of this type. The tell - tale circumstance which the Commission is prepared together from the conduct of these two Dy. Commissioner of Police is that they were afraid of facing the inquiry. An attempt was made by the Commission to examine the Shri Sewa Dass and notice had been issued but service could not be affected. The Commission did not think it worthwhile to proceed further in the matter of this examination by it as the Commission propose recommending the detailed inquiry to be undertaken.

It has been pointed out to the Commission that by way of public interest litigation a writ petition had been filed before the Delhi High Court being CWP No. 2667/84, requesting High Court to issue directions to the Delhi Admn. and the Commissioner of Police to take action for criminal negligence against the guilty, including the two Dy. Commissioner of Police . The High Court had declined to interfere in that matter by order dated October 4 1985, by relying upon and accepting the statement made by joint secretary of the Delhi Admn. to the effect that Shri Marwah had already been appointed to inquire into the matter and the said inquiry was about to be completed and thus there was no necessity for any direction of the type asked for.

(Page 41.) " The inquiry instead of being done by the Commissioner of Police, should be by a higher authority as some aspects of the conduct of the then Commissioner of Police may also have to be looked into . Administrative propriety would not justify his successor Commissioner of Police to inquire into the conduct of his predecessor. If the inquiry started by Shri Marwah had not been stopped by now some of the delinquencies would have already been found out. Since a lot of time has been lost and delayed inquiry may not be very effective and useful, the Commission recommends that an inquiry be undertaken without delay and preferably the inquiry be handed by a Committee of two persons, an experienced retired judge of High Court and an experienced civilian . A time frame should be prescribed for its working.

ACTION AGAINST OTHERS

(Page 41.) The persons named in the affidavits as perpetrators of the hundreds of inhuman crimes are in great number and may perhaps exceed a couple of thousand on modest estimate. Every one in the riotous mob indulging in criminal activity would , in the strict sense of law , have liability though there may be a distinction between those directly indulging in overt acts and others who may have no overt acts ascribed to them. As already noted the victims are keen that the law breakers are put on trial. Keeping that aspect in view it becomes difficult for the Commission while recommending prosecution to be launched to set in judgement over the conduct of some and if necessary find them guilty by naming them under section 8 (b) of the Act . Again the Commission was impressed by the fact that the people involved were in great

number and the task would have been almost and impossible one if the allegations against every named persons had to be scanned complying with the requirements of law....."

"PROSECUTING THE OFFENDER"

Page 62. Most of the widows who appeared before Commission as witnesses had a common grievance that the persons who looted their houses, set them on fire, killed their husbands, children and near relations and brutally assaulted them as also on occasion outraged their modesty, were not being prosecuted. They had the obsession that the killers were free on the streets and were even in a position now to jeopardise their security. When the Commission was set up and became palpable that the incidents of the riot period would be scrutinised in the inquiry, these very villains started threatening the widows and other deponents as also the people of Sikh Community with dire consequences in case they came forward to file affidavits, give evidence or did any such thing or took such action which might involve them either in proceedings before the Commission or in criminal action. In many of the affidavits there has been clear indication of the failure of the Admn. to prosecute the culprits and demand of appropriate prosecutions and due punishments to be awarded to the persons involved in the crime....."

(Page 63.) Else where the Commission has dealt with the number of incidents in a classified way. **The Commission has also held that during the period of riots the rioters had their way and the administration had failed to exercise adequate control. Such a tense and panicky situation prevailed that it became difficult for the victims to approach to the police for lodging first information report were not received if they implicated police or any person in authority and the informants were required to delete such allegations from written reports. When oral reports were recorded they were not taken down verbatim and brief statements dropping out allegations against police or other officials and men in position were written. Several instances have come to the notice of the Commission where a combined FIR has been recorded in regard to several separate incidents. For instance, where a large mob came, got divided into groups and simultaneously attacked different houses and carried on different types of operations in the different premises, they as a fact did not constitute one incident, yet only a common FIR has been drawn up. Recording in brief narrative the incident in a common FIR would not provide a sound basis for a proper prosecution. Tagging of so many different incidents into one FIR was bound to prejudice the trial, if any, as also the accused persons, if called upon to defend themselves in due course. The Commission has noticed on several occasion that while recording FIR's serious allegations has been dropped out and though the case was in fact a serious one, in view of the dropping out of the**

major allegations, a minor offence was set to have been committed. The commission was shocked to find that there were incidents where the police wanted clear and definite allegations against the anti-social elements in different localities to be dropped out while recording FIR's.

Unless the police were hand in glove with the anti social elements in their respective localities they would not have behaved that way.

The sum total effect of this has been that proper FIR's have not been recorded....."

(Page 64.) " In many cases there has not been a proper investigation. The Commission checked up records of investigation of different classes of cases at random and came to find that the investigations were usually perfunctory and most of them had not been duly supervised even though they involved allegations of serious crimes.....".

(Page 65.) " Coming to these aspects of cases in Delhi, the picture is very grim and the Commission is inclined to agree with the victims that the major part of responsibility must be shared by the police. While at Kanpur a number of cases have been chargesheeted and trial thereof is pending, in Delhi most of the cases were closed by final report and the few cases where chargesheet has been sent (details of which appear in the Appendix), not much of progress appears to have been made except in a few. The police released most of the accused persons on bail at its level and those who were challenged to the court in custody have been released by the court. There has been obviously no effective opposition in the matter of grant of bail nor has the order of release on bail being challenged in judicial proceedings in higher courts.

The criminal activity in Delhi apart from being wide spread and in greater intensity exhibited a varied spectrum of human conduct. This requires thorough investigation and careful handling. The same police who remained ineffective during the riots and against whom several allegations were advanced whether recorded or not, were the investigating agency in respect of the FIRs. The Commission finds it not difficult at all to appreciate and accept the contention of the victims that in a such circumstances proper investigation could not be expected. Since the number of deaths is considerably great and there have been number of other grave offences committed, it is necessary that the allegations should be properly looked into and investigations suitably monitored. This will mean fresh or further investigation and review of all actions subsequent thereof. For this purpose since the volume of work is quite heavy, a committee of at least two officers - one judicial and one administrative, preferably a high ranking police officer from outside Delhi - should be appointed immediately with full authority to look into the papers and give such directions to the prosecuting agency as the facts

of each case would warrant. Since there has been a lot of delay in attending to these prosecutions and as further delay would prejudice proper trial and also the prospect of justice being done, it is necessary that expeditious steps should be taken to implement these aspects.

A list of 17 cases has been supplied by the committee in its written arguments wherein Sikhs are accused of different offences. The note appended shows that the list is not complete and there may be some more cases pending. It is the stand of DSGMC that some of these cases were baseless on embellished allegations, innocent people have been roped in and while the aggressor has gone scot free, those who defended themselves in exercise of their right of private defence of person or property have been subjected to the clutches of law. Since the cases are pending trial, the Commission considers it totally improper to deal with them on merit or express any opinion which might embarrass their trial. The Commission, however, is of the view that the recommended committee should be asked to look into these cases and if there be any prosecution which is not justified by the test of normal norms, the same should, in the interest of justice, be withdrawn by the Delhi Admn...."

16. On the basis of aforesaid recommendations of the Misra Commission the government appointed a Committee consisting of a retired Judge of the Delhi High Court, Justice ML Jain and retired IG of Police Mr. AK Banerjee with the following terms of reference.

- a) To examine whether there were cases of omission to register or properly investigate offences committed in Delhi during the period of riots from 31.10.84 to 7.11.1984;
- b) To recommend the registration of cases, where necessary, and to monitor the investigation thereof.
- c) To monitor the conduct of the investigation and the follow up of cases already registered by the police and to suggest steps for effective action including fresh and further investigation, where necessary.
- d) To perform any other function in addition to the above.

Subsequently the Delhi High Court held in civil writ petition filed by Brahma Nand Gupta a co-accused with Shri Sajjan Kumar in several cases that the said Committee could exercise only an advisory role and could not directly monitor the investigation. However the High Court held that the Committee could advise the Lt. Governor to take any action regarding investigation and prosecution of the cases.

The government did not file any appeal against the above mentioned judgement of Delhi High Court. However an appeal was filed by Citizen's Justice Committee (CJC) in the Supreme Court against the above mentioned

judgement. The Honourable Supreme Court was pleased to admit the appeal and the same is pending before it. A copy of the paper book of this Appeal is sent herewith and marked as AC-V.

17. The term of the Jain Banerjee Committee expired in the meantime. The government appointed another Committee i.e. Potti-Rosha Committee (Justice Potti, retired Chief Justice of Gujrat High Court and Mr. B.S. Rosha, retired Director General of Police) with the amended terms of reference i.e. to advise the Lt. Governor on registration, investigation and prosecution of cases. The said Committee recommended several cases including atleast one murder case against Mr. Sajjan Kumar. Ultimately, the said Committee resigned in 1990 on the ground that there was lack of co-operation from the administration.

18. The government then appointed another Committee i.e. Jain Aggarwal Committee (consisting of Justice JD Jain, Retired Judge of Delhi High Court and Mr. D.K. Aggarwal retired Director General of Police, UP). This Committee has looked into some of the cases which had not been registered. These official committees dealt with 1084 cases for registration and investigation / re-investigation. Out of those about 250 cases have so far been registered. The remaining cases are still awaiting registration, investigation and prosecution.

19. On the recommendation of the Committee government appointed a Special Riot Cell in Delhi Police for investigating the cases relating to the 1984 riots. The Committee was closely watching the investigations of these cases. There have been a number of cases in which some progress has been made on recommendation of the Committee. In some cases, the Committee has criticised the police for not holding proper investigations. The Committee was performing the role of a watch dog. The Delhi Police being aware of being so watched, did make some progress in those investigations. The term of the Jain Aggarwal Committee expired on 30.6.93. The government did not extend the term. On request of the Committee to give them one month to wind up, the government allowed them to submit its final report by the 31st July 1993. The Committee submitted its report within time. The purpose for which the Committee was appointed has not yet been fully achieved which is evident from the following:

a) Murder cases involving over 2500 deaths are still pending, either in Courts or at investigation stage with the police. One of the tasks of the Committee was to give directions to the prosecuting agency for proper prosecution of these cases. The Misra Commission as well as these Committees have observed that there has been complete negligence and callousness in the follow up of these cases. This is the duty of the Government to give justice to the people and bring the guilty to book. When the existing govern-

ment machinery had failed to achieve the said purpose, these Special Committees were appointed. The purpose of the Jain Aggarwal Committee is still far from being achieved. At the stage, when due to the concerted efforts of the Jain Aggarwal Committee some progress has been made in some of these cases, winding up of the Committee has adversely effected the prosecution of these cases.

b) A large number of cases are still pending at investigating stage. The government accepted the findings of Misra Commission that the local police is not interested in properly investigating these cases. Due to this reason the Committee was appointed as a watch dog and to ensure that the proper investigation was conducted. As a large number of cases are still pending at the investigating stage the revival of the committee is absolutely essential.

c) The prosecuting agency of the government has not filed the appeals in the murder cases which had resulted in acquittal. When this fact came to the knowledge of Committee, the Committee examined these cases and recommended that appeals should be filed. By that time the limitation to file appeal had already expired. In view of the fact that there is lack of willingness and total negligence on part of prosecuting agency of the government, it is necessary that there should be some Committee to supervise the prosecution of these cases.

20. On the recommendation of the said committees the CBI has registered a murder case against Mr. Sajjan Kumar and others on the basis of complaint by Smt. Anwar Kaur in the year 1990 regarding the killing of her husband. After prolonged investigations the CBI prepared a charge sheet and sent it to the Home Ministry in March 1992 seeking sanction to prosecute Mr. Sajjan Kumar. It took 5 years to register the case, 2 years to investigate it and now since 1-1/2 years, it is pending in the Home Ministry for a decision whether or not to prosecute him ! It may be mentioned that above mentioned case is a murder case and in the chargesheet Mr. Sajjan Kumar has been charged under section 302 of IPC for the murder of Mr. Navin Singh. However, another charge under section 153 A of IPC, i.e. spreading enmity among two different groups on the ground of religion etc., has also been added in the chargesheet. The offence under section 153 A is much lesser a offence than under section 302 i.e. murder. Under section 196 CrPC the permission of the Central Government is necessary for framing a charge under section 153 A IPC. It appears that in the present case section 153 A has been invoked only for the purpose of delaying the filing of the chargesheet in the court. The case has been sent to the Home Ministry for permission to frame a charge under section 153 A. Since the main charge is that of a murder which attracts the capital punishment, there is no need to delay the prosecution only for a minor offence such as 153 A, I.P.C.

21. The Jain - Aggarwal Committee recommended another 21 cases against Mr. Sajjan Kumar, Mr. HKL Bhagat and other leaders for registration and prosecution. According to information available the then Lt. Governor of Delhi Shri Markandey Singh had accepted the recommendations and referred these cases to CBI for investigation. The CBI returned the cases to Delhi administration on the ground that a special cell had already been constituted in Delhi Police and these cases be entrusted to that cell. The Delhi Administration wrote to the Home Ministry in November 1992 for a decision as to who should investigate these cases. The Home Ministry does not appear to have found the time to decide this issue till today ! It is a matter of serious concern that the government is scuttling the whole process of law and finding the ways and means to shield the guilty rather than fulfilling its constitutional obligation of prosecuting the guilty.

22. It is learnt that when Jain Aggarwal Committee recommended the murder case against Mr. HKL Bhagat, Mr. Bhagat approached the then Lt. Governor and pleaded that no case can be registered against him because he had been exonerated by Misra Commission of Inquiry. It is learnt that the Lt. Governor as well as Jain Aggarwal Committee has dismissed that objection as there being no merits in the same and recommended the cases for registration against Mr. Bhagat.

23. The Advisory Committee would like to clarify the factual and legal position regarding the alleged exoneration of Mr. HKL Bhagat by Misra Commission.

Misra Commission has stated in its report that Commission is not going into individual cases. The observations of the Commission at page 41 are material. The Commission has observed " This has, therefore, been an added consideration weighing with the Commission for desisting from making any assesment of the allegations implicating individuals as either members of the riotous mobs or organisers thereof. The Commission could not have undertaken an inquisitorial proceeding."

The Misra Commission has further observed ;

"The Commission had no intention of separately dealing with the case of Shri Bhagat but as this was very much highlighted, was inquired into by the Investigating Agency, evidence about it was specifically led and the affidavits which the Commission has not very much relied upon were pressed into service, the Commission has thought it appropriate to deal with it. The Commission makes it clear that these are prima facie conclusions as far as he is concerned. In the list at Page 219 of the written arguments of the Committee where 16 instances are cited he is said to

have held a meeting of party people. The evidence regarding what transpired at the meeting is scanty."

"In the absence of convincing material, the Commission is not in a position to accept the allegation that Shri Bhagat had instigated the rioters. "

A perusal of the above clearly shows that this does not amount to an exoneration. The Commission has made only prima facie observations and has not given any final findings. In any case the observations of the Commission can not be treated as a bar to registration of a criminal case on specific charges, mainly when sufficient evidence has come forth for the prosecution of the person in a criminal case.

24. Two other murder cases, one against Mr. Sajjan Kumar and another against Mr. Dharam Das Shastri, are being investigated by the Delhi Police. It is learnt that the charge sheets are ready in these cases but they have not yet been filed in court due to pressure from some higher source.

25. Some other cases recommended by the Jain - Aggarwal Committee have not yet been registered, while investigations in the cases which have been registered are progressing at a snail's pace.

26. The Jain - Aggarwal Committee has identified 292 police officials who were found guilty of negligence of duty in conducting faulty investigations and for tampering with the records. No action has been initiated against these police officials.

27. One case is registered by Delhi Police involving Mr. Jagdish Tytler. It is learnt that the name of Mr. Jagdish Tytler has been dropped during investigations. The government should examine this case carefully and if necessary order reinvestigation of the same.

28. 72 police officials were identified by Mrs. Kusum Mittal, IAS (Retd.) in her report for actively participating in the violence and for negligence of their duties during the riots. The government served charge sheet on those officials just before the Punjab elections. After that no further progress has been made and all the officials continue in senior positions while some of them have even been promoted.

29. It is duty of the government to enforce the law and to punish the guilty as per the law. Under the Criminal Procedure Code. The police is duty bound to register a case wherever a cognizable offence is committed. Since a murder is cognizable offence therefore the police is under a duty to register every case regarding each and every murder and conduct the investigations to find as to who has committed these murder and than to prosecute the said accused persons as per the law. Regarding the killings of November 1984 the

police has grossly failed in its duty. In turn the government also failed to enforce the law. A number of steps were taken to ensure that the law should be enforced at the earliest but the same has not borne much fruits as yet as police and government have scuttled every proceeding at every stage.

INFORMATION AND DOCUMENTS REQUIRED

The Advisory Committee requires certain information and documents relating to various aspects of the issues involved to enable it to make its remaining recommendations. A separate request is being made for collecting and providing such information and documents to the Advisory Committee to enable it to complete its role effectively.

In the meantime, this committee recommends that government may consider taking the following steps with a view to maintain the rule of law and get the guilty persons of the public and police suitably dealt with. Further recommendations will be made on receiving the information and documents as may be supplied to the Advisory Committee. These recommendations are being made on the basis of the information available at the moment with the Advisory Committee at the moment so as to avoid further delay in taking appropriate action.

FIRST SET OF RECOMMENDATIONS OF THE ADVISORY COMMITTEE

The Government may consider the following :

1. Jain Aggarwal Committee (consisting of Justice J.D.Jain, retired judge of Delhi High Court and Mr. D.K.Aggarwal, retired Director General of Police) has recommended registration and further action in 21 cases involving certain political leaders. In spite of the fact that the LT. Governor of Delhi had accepted these recommendations long ago, the cases have not been registered so far. These cases are pending since mid 1992 for registration. These 21 cases may be registered immediately and necessary follow up action for investigation and filling of challans in appropriate courts be taken with a sense of urgency.

2. The Jain Aggarwal Committee was appointed by the LT. Governor of Delhi to :

- (a) To examine whether there were cases of omission to register or properly investigate offences committed in Delhi during the period of riots from 31st October, 1984 to 7th November, 1984:
- (b) To recommend to the Administrator, where necessary, the registration of cases and their investigation:

(c) To make suggestions to the Administrator where necessary, for the conduct of investigation and prosecution of cases.

This committee has been pre-maturely wound up. It is recommended that this committee be revived to complete its unfinished task.

3. The Special Riots Cell constituted in Delhi Police to handle November 1984 cases be made more effective and should continue for the investigation and prosecution of these cases. It is particularly suggested that a police officer of unquestioned integrity of the rank of atleast a DIG be taken on deputation in the Delhi Police and made Incharge of this Special Cell.

4. All cases already recommended by Jain Aggarwal Committee be registered immediately. The post registration investigation to enable the preparation and filing of the chargesheets in court may be got completed within a time bound programme.

5. The procedure adopted by Delhi Police of embarking on pre-registration inquiry with a view to decide whether to register the cases or not is not warranted by law and be stopped. All the cases should be first registered and investigated thereafter for filing the chargesheets in the court.

6. In case of murder charge against Mr. Sajjan Kumar and others on the complaint of Mrs. Anwar Kaur, the government of Delhi should take up the matter with CBI to drop the charge under section 153 A IPC. and proceed with the murder case by filing the chargesheet under section 302 IPC etc. Prosecution of a serious charge of murder should not be held up any further.

7. Independant Special Prosecutors from the practicing lawyers be appointed to handle the cases relating to November 1984 killings for different areas.

8. It has come to the notice of Advisory Committee that some in murder cases which have been registered the accused named therein have not been arrested. It is the mandate of law that when a case of non-bailable offence is registered the accused are arrested and produced before the Magistrate within 24 hours and then it is left in the judicial discretion of the court to proceed with them. The arrest of the accused in a non-bailable offence and more particularly in a serious offence connected with murder, is a must and the investigating officer is duty bound to affect it. Wherever dereliction of duty of this nature has taken place, steps should be taken to remove it.

9. The Government may consider taking appropriate action against the concerned police officials who may be found to have failed in the discharge of their duties during Nov. 1984 carnage. The failure may be by acts of commission or omission. The allegations against police officials include;

(a) commission of serious offences for which criminal cases have been registered or recommended to be registered against police officials;

(b) actively aided and abetted the commission of offences;

(c) connived at commission of serious offences;

(d) not taken immediate appropriate action according to law to prevent or stop the commission of offences;

(e) tempered with or fabricated the record in connection with the violence or cases connected therewith;

(f) issued directions contrary to the law with a view to help the offenders.

The government may consider taking appropriate action by departmental proceedings or otherwise to deal with the delinquent police officials, including suspension in appropriate cases keeping in view the gravity of misconduct and other relevant factors.

10. Chargesheets have already been served in departmental proceedings against 72 police officials. Expeditious and appropriate steps may be taken to bring these proceedings to a logical end.

11. Jain-Aggarwal committee has identified police officials who have tempered with or fabricated official records or deliberately conducted faulty investigations to help the accused. Such officials be dealt with by taking suitable departmental action against them.

11th. January 1994

Justice R.S. Narula

Lt. Gen. J.S. Aurora

D.V. Sehgal

U.R. Lalit

Dr. Maheep Singh

Adarsh Goel

Virender Singh Johar

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